

**Solenex LLC/Badger-Two Medicine Traditional Cultural District (B2M TCD) Consulting Party Meeting**

**January 29, 2014**

**MEETING NOTES**

**Lewis & Clark National Forest Supervisor's Office Conference Room**

**Dave Cunningham, L&C Forest – Facilitator**

**Karen Horn-notetaker**

**In attendance for consulting parties** (see Attachment #1 for affiliation and further contact information, as well as other public/interested attendees):

Mike Muñoz (USFS), Mark Bodily (USFS), Robin Strathy (USFS), Mike DeRosier (Glacier County), Sidney Longwell (Solenex) (by phone), Joseph Large (Solenex), Steve Lechner (Solenex), John Murray (Blackfeet THPO), Jeri Lawrence (Blackfeet THPO), Lon Johnson (Glacier National Park) (by phone), Stan Wilmoth (Montana SHPO) (by phone), Brian Meinhart (Western Energy Alliance)(by phone).

**Part I:**

- **Welcome & Introductions** – Dave Cunningham – Lewis & Clark National Forest-meeting facilitator:

Dave welcomed everyone, covered housekeeping information, presented the meeting objective, meeting ground rules, and facilitated introductions of everyone in the room and on the phone.

**Meeting Objective:** Re-Initiate consultation according to the National Historic Protection Act (NHPA) Section 106. To make an Assessment of Adverse Effects as outlined in 36 C.F.R. 800.5(a) (Apply criteria of adverse effect) for the Badger-Two Medicine Traditional Cultural District.

**Ground Rules:**

1. We will not discuss any aspects of the current lawsuit(s).
2. Consulting parties are free to ask questions or add to the discussion throughout the meeting.
3. Non consulting parties (public, other agencies, etc.) are welcome to be in the room but must remain respectful and quiet. They will be given an opportunity on the agenda to ask clarifying questions and express their views.
4. The meeting's purpose is to only discuss NHPA Section 106 issues.
5. The Lewis & Clark National Forest expects that the discussion of Applying Criteria of Adverse Effect (36 C.F.R. 800.5(a) will take some time and could involve additional meetings;
6. At the end of the facilitated meeting, the room is available for people to stay after and talk with each other.
7. If a consulting party cannot attend the meeting, the meeting will proceed with the Lewis & Clark National Forest providing the meeting notes to any consulting party not in attendance and solicit their comments.

- **Consultation Overview /NHPA Section 106 Basics/Definition of Traditional Cultural Properties**– Mark Bodily-Lewis & Clark National Forest-Forest Archaeologist (power point presentation– Attachment #2):

This overview is designed to briefly bring all of the consulting parties up to speed with how the consultation process works and where we are in the process.

Mark discussed the purpose of consultation and who the “entitled” consulting parties are (Attachment 2, slide 2). In addition, other parties with a demonstrated interest “may” acquire consulting party status. This status must be requested in writing and Agency, SHPO and THPO officials will review the request and make the determination. The responsible Agency Official is the Forest Supervisor .

Mark displayed a flow chart of the Section 106 process as outlined in 36 CFR 800 (Protection of Historic Properties) (see Attachment #5). These regulations are overseen by the Advisory Council for Historic Preservation (the Council). At this point we are beginning the assessment of adverse effects (Attachment 2, slide 6). This is about halfway through the process. If adverse effects are identified through this process, then the Council will be brought into the consultations and the consulting parties will continue to try to resolve them by avoiding, minimizing or mitigation. Any avoiding, minimizing, or mitigation of adverse effects will be documented in a Memorandum of Agreement (Attachment 2, slide 7).

Mark next discussed the definition of a Traditional Cultural Property or District (Attachment 2, slides 8 & 9). It is a property that is significant because of its association with cultural practices or beliefs of a living community that are rooted in the community’s history and are important in maintaining the community’s cultural identity. Guidelines for Evaluating and Documenting Traditional Cultural Properties are contained in National Register Bulletin #38.

#### **Consulting Parties Input/Discussion & Dialogue:**

**Sidney Longwell** – Would like to clarify that at the bottom of the map of the TCD it states the legal location as being in Section 23. This is not the section the well is being proposed in. The well pad is being proposed in section 26. Mark responded that as the TCD encompasses many sections, section 23 is just being used as a TCD “representative” section within the TCD for mapping and database purposes. This section reference is not connected to any undertaking.

**Questions/clarifications from others:** None.

#### **Part II:**

- **Current Exploratory Drilling approved APD (undertaking)** – Robin Strathy-Lewis & Clark National Forest-Planning Staff Officer:

Robin described the approved application to drill (APD) which is the proposed undertaking we are consulting on. She then went over a brief chronology of events leading up to this point. Complete chronology of events from 1981 to present is attached (Attachment #3). There is an older lawsuit that is currently pending and the lease is presently in suspension which means that the clock for its 10-year term has been stopped. There are presently 18 leases remaining in the area and all are being held under suspension.

The approved APD involves 3/10 mile of road reconstruction and 5 miles of new construction, a temporary bridge over the Two-Medicine River and access along a current Forest Service easement on private land to connect to some old seismic roads. The well pad encompasses 4 acres. It's being estimated that it could take about 8 months from construction to assessment of the results of the exploratory well.

#### **Consulting Parties Input/Discussion & Dialogue:**

##### **Joe Large – RPM Geologic:** (Power point presentation-Attachment #4)

Joe stated that if the lease moves forward, RPM would act as the operator. Joe discussed the history of petroleum related activity in the area of the current lease and showed a map of existing transportation systems in the area (attachment 4, slides 2-4). Joe discussed how the processes for drilling have changed since the original proposal. All would be done now in a completely closed system with no need for use of reserve pits (attachment 4, slide 6). As this exploration is for natural gas rather than oil, no pump jacks would be needed. Only a small well head would be necessary. Fracking is not needed as the area is naturally fracked (attachment 4, slides 7 & 8).

**Mike DeRosier** asked about the need for any dehydration process? Joe responded in the affirmative that a work building of some sort would be needed for this. Flares would only occur while drilling, not once the gas has been developed. It's not known how much hydrogen gas may exist but it would get scrubbed out. Not much is in the Canadian well sites but there is quite a bit in the Blackleaf area. This site, which is in between those areas, is still unknown.

Joe then discussed the concern of future contamination from drilling and the steps taken to prevent this (attachment 4, slide 9). Joe concluded by stating that they have no interests in destroying pristine wilderness or wiping out anything of historical significance and that drilling in this area does neither (attachment 4, slide 10). He pointed out that there is a history of industrial and commercial activity in this area including well drilling, railroad lines, highways, gas pipelines, and high energy transmission and communications lines and towers. He showed pictures of some examples of those activities in the area (attachment 4, slides 10-11).

**John Murray** described how he has watched for many years different people and groups try to sell their plans to the Blackfeet. The railroad was built years ago and the Blackfeet are just now developing plans for protection from hazardous oil that may be travelling through from the Bakken. Most of the activities and developments that are currently in the area were there pre-NEPA. That's why they exist. Any new activities will go through the NEPA process and consultation for Traditional Cultural Properties. The current NEPA did not take into account the Area of Potential Effect for where the well will go. New discoveries in the area should trigger a new NEPA process being initiated. Reminded everyone that we are here negotiating Nation to Nation. Interpretation of the treaties is also evolving and changing. Discussed a letter from Phillip Roy. Two words "mineral law" if not included in the treaties, then rights were not given up. Will there be other wells if this one is successful?

**Joe Large** – Yes, probably would drill more wells if this one is successful. Would run 3D seismic then cherry pick spots for additional wells. Of course, they would only choose spots that are acceptable to all consulting parties.

**John Murray** – During the original consultation in the 80's, the Forest Supervisor, Dale Gorman, asked the Tribe to tell them where their sacred sites were and stated that fences could be built around them and the rest of the area opened to drilling. Definite boundaries cannot be given for sacred sites. John stated that he hasn't been able to talk face to face with Sidney Longwell and have a dialogue on a personal basis. Both parties can learn from each other.

When Secretary Watt came to the Reservation they had a face to face discussion and he asked what he could do to help? Meeting with the people changed his views on Indians but the leases had already been issued. When Sec. Watt resigned he became a consultant for the Crow. The Blackfeet Tribe still retains all their language, ceremonies and practices. This area is still very important. There were 45 original leases and only 18 remain. Many were relinquished. We need to put this issue to bed.

**Mike Muñoz** – Regarding the seismic roads from the 50's through the 80's – what was found?

**Joe Large** – doesn't know. He can only get this information if he purchases it. If he had all this information he could possibly look at other drilling sites possibly near the edge of the area. Seismic information is helpful in that it gives a "better educated guess" but it comes at a cost.

**Dave Cunningham** – asked about the new technology for directional drilling and how to decide where to drill without the seismic information.

**Joe Large** – now can drill directionally from anywhere to avoid a particular area (up to 1 mile away from gas pockets). The confidence for drilling drops after a mile but it can be done. Without the seismic information it's an educated guess about where to drill. The reason this well site was chosen is because 2D seismic shows a 4-sided structure there.

**Questions/Clarifications from other parties:**

**Rudy Tankink** – Is there potential for this area to come to what's in Williston?

**Joe Large** – No. The only evidence is that of natural gas, not oil. But a nearby well off-Forest had 20M CFM's of gas/day for 2 weeks. If there was any oil it would only be in small pockets. To the north in Canada there are trillions of CFM's of gas being produced. Blackleaf produced billions of CFM's before it was shut down.

**Carl Davis** – Is there any way to mobilize without road construction? Is there a need for regular access if a well is in production? What would this process look like?

**Joe Large** – There is no economic way to mobilize without road construction. With new technology, 20,000' wells can be drilled in 14 days, 3 weeks to a month if problems are encountered. Would be no longer than 8 months for the entire process. If a well is in production, there is a need for regular access. Would need to keep only a small maintenance road for a workover rig. This road would be comparable to the type of road that could accommodate a logging truck.

First the road would be built. The road would be built to standard prescribed by the Forest Service. Joe doesn't build roads so can't say the timeframe for this. A temporary bridge would be built for exploration purposes (also to FS standard for the type of vehicles needing to access). Move in would take less than 1 week. Spot for drill pad would be levelled. Approximately 100 sq. yd. needed for drill rig, tanks, and 8 trailers. Around 3 weeks needed to drill max. If nothing is found, site would be totally reclaimed. If gas is found, the site would look like slide #7 in power point. Some permanent access would be needed by a maintenance person and any gas lines would be buried.

**Kendall Flint** – Discussed the pictures shown in Joe Large's power point and questioned where they were taken in relation to where he lives. Felt that the pictures were not taken from the proposed well site but rather from where his house is, which is not on the lease area.

**Joe Large** – the pictures were taken by Darryl Flowers using GPS from on the lease area.

***Clarification – photos were not taken from the proposed well site but were taken from another spot within the lease area. Legal lease area is a 10 sq. mile area. The lease area is all on National Forest, not on the Reservation.***

**Maria Zedeño** – You would be able to see no already existing developments from the proposed drilling site because of heavy vegetation.

**Kendall Flint** – The label "jeep trail/primitive road" on the map (attachment 4, slide 4) is misleading as the area is now totally non-motorized. Only foot and horse travel is now allowed.

**Joe Large** – The study for the new pipeline/communications towers must have had new NEPA done. How were they approved?

**John Murray** – These areas were found to be previously disturbed.

**Maria Zedeño** – There becomes an issue of cultural viability when places on the landscape that have impacts continue to be used for cultural purposes and new impacts are introduced can these places still continue to be used and still be sacred ground? When impacts become too great these places may no longer be culturally viable. There will be a threshold of how much more impact the land can take. Is there any prediction of productivity of this area?

**Joe Large** – can't really predict until this drilling is completed. Can only guess by what has been found in surrounding areas.

**Cheryl Ulmer** – if nothing is found with this well, what happens?

**Joe Large** – the hole would be filled, capped and covered with ground. A small marker would be left on top of the soil. The vegetation re-grows, land is re-sloped and re-contoured as close to original as possible.

**Rudy Tankink** – has seen this done successfully on private land.

**Darryl Flowers** – Clarification – Section 31 in the lease description (Flathead County section, Roosevelt Memorial area) is this within the lease area?

**Robin Strathy** – will look this up to verify and get back with that information.

- **Badger-Two Medicine TCD Description/Area of Potential Effect (APE)** - Mark Bodily (Attachment #2 continued):

Mark clarified the boundaries of the TCD with the map (Attachment #6). The lease is all within the TCD. The Badger-Two Medicine TCD was determined to be eligible for listing on the National Register of Historic Places in 2002 (attachment 2, slides 11-31). The TCD is considered significant at a National level and is eligible under all four eligibility criteria (attachment 2, slides 15-18). The area is 165,588 acres in size with 174 contributing resources (attachment 2, slide 20).

Mark discussed the Solenex Area of Potential Effect (APE) in the TCD (Attachment #7). The APE is determined by the actual area of potential ground disturbance, visual, noise, and olfactory effects (attachment 2, slide 26) (see also attachment 2, slides 26-28). The APE was determined by Agency, SHPO and THPO personnel and based on previous archeological studies utilizing information provided on the visual, audible, direct and indirect effects. The APE takes into account the widest potential effects that

could occur with the undertaking to be implemented based in part on the information provided by the lessee. In determining the APE, the new boundary of the TCD was considered as well as all of the access roads as this area is now non-motorized. Only the current approved APD was taken into account. The APE would be reexamined and could change if the project changes.

### **Part III**

- **Applying Criteria of Adverse Effects Basics** – Mark Bodily (Attachment #2 continued):

Mark stated that now that the APE has been determined then the consulting parties can make an assessment of adverse effects as outlined in 36 CFR 800.5(a) for the Badger-Two Medicine TCD (see Attachment #5). This is where we are in the process at this time (attachment 2, slide 30). Examples of possible adverse effects were discussed (attachment 2, slide 31).

Discussed cumulative effects (other things that are also happening that could affect the area). We have not yet gone through the process of determining adverse effects and how/if they can be mitigated. This process will begin in subsequent meetings.

#### **Consulting Parties Input/Discussion & Dialogue:**

**Mike DeRosier** – are TCD's established when conflicts are proposed?

**Mark Bodily** – Undertakings require cultural review by law as directed by the National Historic Preservation Act. Often, this is what drives cultural studies and can result in the identification of historic properties or Traditional Cultural Districts. When this occurs, then we need to evaluate potential effects of a proposal to an area of significance. This is the general scenario for leading up to the establishment of a TCD simply because of the cost and time involved in independently (i.e. independent of an undertaking) establishing a TCD.

**John Murray** – described the aboriginal territory of the Blackfeet. This TCD is just a small part of that area. The Tribe plans to document additional territory as funds become available. Discussed the original Blackfeet Forest (now Flathead Forest). The well that was drilled in Lubec was drilled at a time when it was illegal for the Blackfeet to practice their beliefs.

**Joe Large** – questioned the portion of the criteria describing creation of the Rocky Mountains and prairies (attachment 2, slide 14). How is this proven by science? Would evidence of people in the area before the Blackfeet be taken into account? Would that affect the ethnographic study?

**Mike Derosier** – Many studies have shown history of people going back 6000-12000 years in the area. This has been proven by science.

**John Murray** – Blackfeet oral histories differ from other writings that have been edited and changed over time. Their oral histories are still intact and sacred. History has shown that the Blackfeet people in the past have been concentrating on taking care of basic needs of survival. Only recently have they been able to begin focusing resources on the traditions and history.

**Brian Meinhart** – Question about where the lease falls within the traditional use area? Answer: Lease is all within the TCD.

**Steve Lechner** – Can we see the ethnographic study (referencing the 2012 study)?

**Mark Bodily** – No, not in its entirety. It is a confidential document protected by various Federal laws (i.e. NHPA, APRA, NEPA, and FOIA). It is an exempted document under FOIA. Locations of actual sites and other information are held confidential in part to protect them from being disturbed. However, the USFS is currently in the process of redacting the confidential portions of the document for release under FOIA.

**John Murray** – two studies were done. The first was completed under strict timeframes. The first was done by non-Indians. They looked for sites on the ground and tried to get oral history and affidavits from tribal members. Many were reluctant to participate because of Dale Gorman's statement about identifying sites and putting fences around them and then leasing everything else. The second study that Dr. Zedeño completed was able to involve many more people. We currently have even more evidence that could be presented to include additional area.

**Sidney Longwell** – clarification as to whether or not the TCD is listed on the Register?

**Mark Bodily** – It is not listed but has been determined to be eligible for listing, so by law, the Forest Service must treat it as though it is listed on the Register.

**Brian Meinhart** – is there any way the operator might have access to this information so they can tailor their operating plan to avoid sites? How could anyone assess effects without knowing what's in the report?

**Mark Bodily** – It is common practice to provide minimal, but enough information to protect the properties/sites. If work occurs on the ground, yes, we will be working across the landscape with the consulting parties to fine tune the proposal to protect sites. The redacted report in conjunction with the summary information we are providing you today will provide you with enough information to apply the criteria of adverse effects.

**John Murray** – the Blackfeet knowledge is not "secret" but is privileged in a sense. We can work together on a certain level and teach some information on a limited basis.



**Dave Cunningham** – We will get the redacted report and work with the Tribe to see what can be shared and what needs to be maintained in confidence.

**Questions/Clarifications from other parties:**

**Leslie Vaculik** – Will need to get all parties information on what constraints are on the area.

**Rudy Tankink** – Is the TCD sacred ground that can't be touched?

**Mark Bodily** – Per bulletin #38 – it doesn't mean that things can't happen within the TCD, only that a prescribed process must be followed to avoid, minimize, or mitigate adverse effects. After the process is completed, and if all consulting parties can't concur, then an Agency official in charge will determine what will be allowed. This official is someone above the current Forest Supervisor level.

**Carl Davis** – This process sounds like it is very unique and elaborate, but it happens all the time within the Forest Service. The APE is really determined for all proposed projects, and then Inter-disciplinary (ID) teams of specialists communicate back and forth to develop a final product that embodies the best solution for all. All of the range of options must be discussed to come up with a consensus. If we become locked into an all or nothing mindset, then the final decision maker would take over for resolution. Remember community connections to the place, where important areas are, and how to diminish what will be an impact to the area is what's important. The consultation process is about open government. The quality of what goes into the process from all parties will determine the quality of the product that comes out.

**Darryl Flowers** – Does multiple use apply?

**Dave Cunningham** – Yes, remember though, that multiple use does not mean all uses can occur in every area.

**Sidney Longwell** – What is the possibility of using some old fire line to come in to the proposed drill site?

**Dave Cunningham** – This is something that the consulting parties could evaluate in the future when talking specific mitigation of adverse effects.

**Mark Bodily** - Will send a "Doodle Poll" out to consulting parties for best date to schedule next meeting (last week of March, 1<sup>st</sup> week of April). There is the possibility of adding some additional consulting parties by next meeting by following the process outlined in 36CFR800.2(c)(5) (Attachment #5).

- **BIN Items/Request for Additional Information:**

- What are the past Environmental Analyses done in the Badger-Two Medicine?
- What is the rationale for defining the APE?

- What were the original USFS/BLM constraints on the Solenex approved APD?
- What is the status of available acreage for oil & gas development in the L&C National Forest?